



FH

**STATE OF WISCONSIN  
Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
c/o [REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

MDD/166404

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**PRELIMINARY RECITALS**

Pursuant to a petition filed April 22, 2015, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Brown County Human Services in regard to Medical Assistance, a telephone hearing was held on June 23, 2015.

The issue for determination is whether petitioner is disabled.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
c/o [REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703  
By: No Appearance

**ADMINISTRATIVE LAW JUDGE:**

Peter McCombs  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner is a 56 year old resident of Brown County.
2. The petitioner applied for MA alleging disability on or about November 7, 2015. The basis for petitioner's disability application was her diagnoses of emphysema, COPD, incontinence and general anxiety disorder. Petitioner is medicated to treat each diagnosis. Petitioner's medical history is significant for carpal tunnel surgery.

3. The Disability Determination Bureau (DDB) sent a March 31, 2015 notice to the petitioner concluding that petitioner was not disabled due to "no severe impairment" (not severe enough to prevent petitioner from working).
4. During the December 1, 2011 hearing, petitioner testified that she cares for her disabled husband as well as six grandchildren who reside with them.
5. The petitioner's last employment was in the early 2000's at a wood mill.
6. Petitioner testified that she is not presently seeking employment due to her responsibilities of caring for her husband and grandchildren.
7. The petitioner has a high school diploma.

### DISCUSSION

A person between ages 18 and 65, with no minor children, must be blind or disabled to be eligible for MA. In order to be eligible for MA as a disabled person, an applicant must meet the same tests for disability as those used by the Social Security Administration to determine disability for Supplemental Security Income (Title XVI benefits). § 49.47(4) (a)4., Wis. Stats. Title XVI of the Social Security Act defines "disability" as the inability to engage in any substantial gainful activity due to physical or mental impairments which can be expected to either result in death or last for a continuous period of not less than 12 months.

Under the regulations established to interpret Title XVI, a claimant's disability must meet the 12-month durational requirement before being found disabling. In addition, the disability must pass five sequential tests established in the Social Security Administration regulations. Those tests are as follows:

1. An individual who is working and engaging in substantial gainful activity will not be found to be disabled regardless of medical findings. 20 CFR 416.920.
2. **An individual who does not have a "severe impairment" will not be found to be disabled. 20 CFR 416.920(c). A condition is not severe if it does not significantly limit physical or mental ability to do basic work. 20 CFR 416.921(a).**
3. If an individual is not working and is suffering from a severe impairment which meets the duration requirement and meets or equals a listed impairment in Appendix I of the federal regulations, a finding of disabled will be made without consideration of vocational factors (age, education, and work experience.) 20 CFR 416.920(d).
4. If an individual is capable of performing work he or she has done in the past, a finding of not disabled must be made. 20 CFR 416.920(f).
5. If an individual's impairment is so severe as to preclude the performance of past work, other factors, including age, education, past work experience and residual function capacity must be considered to determine if other types of work the individual has not performed in the past can be performed. 20 CFR 416.920(f).

(Emphasis added).

These tests are sequential. If it is determined that an applicant for MA is employed or does not suffer from a severe impairment it is not necessary to proceed to analyze the next test in the above sequence. If a person's condition does not meet the SSA listings an analysis of capability to perform past work must be made. If

the individual cannot perform past work a determination of the residual functioning capacity to perform other work must be made. 20 CFR 416.920(a).

Although the determination of disability depends upon medical evidence, it is not a medical conclusion; it is a legal conclusion. Thus, the observations, diagnoses, and test results reported by the petitioner's physicians are relevant evidence, however the opinions of the doctors as to whether the petitioner is disabled are not relevant. The definitions of disability in the regulations governing MA, Supplemental Security Income (SSI), and Social Security Disability Insurance (SSDI) programs require more than mere medical opinions that a person is disabled in order to be eligible. There must be medical evidence that an impairment exists, that it affects basic work activities, that it is severe, and that it will last 12 months or longer as a severe impairment.

If the petitioner is working at a job that is considered to be substantial gainful employment, she will be found to be not disabled without further review. During the hearing, the petitioner indicated that she is not employed, and is not presently seeking employment.

In determining whether a disability is "severe" under 20 C.F.R. § 416.920(c), the Bureau applies the following test:

If you do not have any impairment or combination of impairments which significantly limits your physical or mental ability to do basic work activities, we will find that you do not have a severe impairment and are, therefore, not disabled. We will not consider your age, education and work experience.

In this particular case, DDB determined the petitioner does not have severe impairment. The evidence in the record at this time supports this conclusion. **An individual who does not have a "severe impairment" will not be found to be disabled. 20 CFR 416.920(c). A condition is not severe if it does not significantly limit physical or mental ability to do basic work. 20 CFR 416.921(a).** The medical evidence indicates that while petitioner does have some medical problems, those conditions do not prevent her from basic tasks such as driving a car, cooking, cleaning, shopping and other activities of daily living (ADLs). The petitioner does attend to her own self-cares and household chores. The petitioner does not meet any Listing of Impairment. During the hearing, petitioner was unable to provide any evidence to establish that her medical problems were individually or in totality "severe impairments." Moreover, during the hearing, the petitioner admitted that she was capable of providing care for her disabled husband, noting that she makes sure that he takes his medications and has his cane available, and that she needs to be present for him as he has frequent falls. She further testified that she is seeking a disability finding in order to obtain insurance coverage, however, the need for health insurance coverage is not a consideration within the disability determination review. Accordingly, based upon the above, I must conclude that the DDB correctly determined that the petitioner at this time is not disabled as that term is used for MA purposes pursuant to § 49.47(4), Wis. Stats.

### **CONCLUSIONS OF LAW**

The petitioner is not disabled as that term is used for MA purposes pursuant to § 49.47(4), Wis. Stats.

**THEREFORE, it is**

**ORDERED**

The petition for review herein be and the same is hereby Dismissed.

## REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

## APPEAL TO COURT

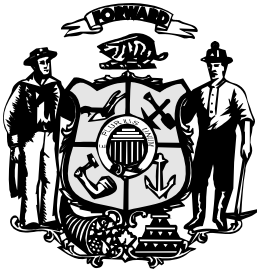
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,  
Wisconsin, this 31st day of July, 2015

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\sPeter McCombs  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on July 31, 2015.

Brown County Human Services  
Disability Determination Bureau  
[asamsa@hrserase.com](mailto:asamsa@hrserase.com)